

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RANDY LIGHTFOOT and CAROL
LIGHTFOOT,

Plaintiffs/Counter Claim Defendants,

v.

FEDERAL HOME LOAN MORTGAGE
CORPORATION,

Defendant,

AMTRUST BANK, A DIVISION OF
NEW YORK COMMUNITY BANK,

Defendant,

AMERICA ONE FINANCE, LLC, OF
ST. CHARLES,

Defendant/Crossclaim Defendant,

KEITH N. GRIFFIN, SR.,

Defendant/Counter Claim Plaintiff/
Crossclaim Plaintiff.

Case No. 4:11CV01168 AGF

MEMORANDUM AND ORDER

The action before the Court seeks to quiet title to certain real property or, in the alternative, to obtain damages for breach of warranty, unjust enrichment, negligent misrepresentation, and fraudulent misrepresentation. The complaint, filed on July 1, 2011, names four defendants: the Federal Home Loan Mortgage Corporation, AmTrust Bank (“AmTrust”), America One Finance of St. Charles, MO, and Keith N. Griffin, Sr.

The matter is now before the court on the motion, filed on July 29, 2011, by Defendant AmTrust and non-party Nationstar Mortgage, LLC, (“Nationstar”) to substitute Nationstar in AmTrust’s place. AmTrust was named as a defendant because it held a deed of trust dated May 16, 2008, as security for a loan connected to the real property in dispute. The motion explains that, since that time, AmTrust was acquired by the Federal Deposit Insurance Corporation (“FDIC”) and continued servicing that deed of trust on the FDIC’s behalf. Then, in September 2010, servicing rights were assigned to Nationstar. The agreement by which that assignment was made obligates Nationstar to assume the defense of AmTrust’s interests in subsequent litigation concerning the assigned “mortgage loans.” The motion to substitute states that Nationstar is the real party-in-interest and stands ready, willing, and able to be substituted in place of AmTrust.


Plaintiff opposes the motion, in part on the ground that it was unable to determine Nationstar’s liability for damages that may be awarded to Lightfoot under Counts V and VI of the complaint. AmTrust and Nationstar’s agreement does leave unclear whether Nationstar would assume liability for AmTrust’s prior negligence and fraud, such as that alleged in the complaint. Therefore, at this point in the proceedings, the motion to substitute shall be denied.

Accordingly,

IT IS HEREBY ORDERED that Defendant AmTrust’s Motion to Substitute (Doc. No. 8) is **DENIED**, without prejudice.

IT IS FURTHERED ORDERED that, absent objection filed with this Court on

or before October 26, 2011, Nationstar Mortgage, LLC, shall be added as a party defendant in this action.


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 19th day of October, 2011.